(3)

Supreme Court, U.S.
FILED
JUN 27 1994
OFFICE OF THE CLERK

No. 93-1975

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

ROBERT HADEN KING, JR.,
Petitioner,

v.

NEIL BROWN, SUPERINTENDENT,
CLALLAM BAY CORRECTIONS CENTER,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

---

SUPPLEMENTAL MEMORANDUM OF AUTHORITY

ROBERT H. KING, SR.
KING, KING & KING
King Building
757 Chestnut Street
Gadsden, Alabama 35901
(205) 547-2431

REX E. LEE *
CARTER G. PHILLIPS
PAUL E. KALB
NATHAN C. SHEERS
SIDLEY & AUSTIN
1722 Eye Street, N.W.
Washington, D.C. 20006
(202) 736-8000

Counsel for Petitioner

* Counsel of Record

June 27, 1994

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

4 pp

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

No. 93-1975

ROBERT HADEN KING, JR.,
Petitioner,

v.

NEIL BROWN, SUPERINTENDENT,
CLALLAM BAY CORRECTIONS CENTER,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

---

SUPPLEMENTAL MEMORANDUM OF AUTHORITY

Petitioner submits this supplemental memorandum pursuant to Rule 15.7 of the Rules of this Court in light of this Court's decision in *Reed* v. *Farley*, No. 93-5418 (June 20, 1994), which was decided 11 days after the petition was filed. Petitioner files this memorandum so that respondent will have an opportuity to address his arguments concerning *Reed* and so that the Court may consider petitioner's arguments at the same time that it reviews the State's response.

In *Reed*, this Court held that a prisoner's claim that his right to a speedy trial under the Interstate Agreement on Detainers had been violated was not cognizable under 28 U.S.C. § 2254 where the prisoner had failed to register any objection to the trial date when it was set. This

Court reasoned that such a violation was not " 'a fundamental defect which inherently results in a complete miscarriage of justice, [or] an omission inconsistent with the rudimentary demands of fair procedure.' " Slip Op. at 9 (quoting *Hill* v. *United States*, 368 U.S. 424, 428 (1962)). This Court expressly declined, however, to consider whether it would "confront an omission of the kind contemplated in *Hill* . . . if a state court, presented with a timely request to set a trial date within the IAD's 120-day period, nonetheless refused to comply with [the Act's speedy trial provision]." *Id.*

Justices Blackmun, Stevens, Kennedy and Souter dissented, arguing that the Court had "disregard[ed] Congress' unambiguous judgment about the severity of, and the necessary remedy for, a violation of the IAD time limits." Dissent at 2. The dissenters argued that

> Congress spoke with unmistakable clarity when it prescribed both the time limits for trying a prisoner whose custody was obtained under the IAD and the remedy for a violation of those limits. . . . Quite simply, Congress has determined that a receiving state must try the defendant within 120 days or not at all.

Id. at 9-10.

The petition in this case presents the question whether a superseding indictment may extend the IAD's 120-day time limit. This Court should review that question because the Ninth Circuit's holding conflicts with the holdings of every other court to address the issue. Pet. at 19-23.

This Court's decision in *Reed*, however, provides two additional reasons why the petition should be granted. *First*, petitioner raised timely objections to the extension of time which ultimately caused him not to be tried within the 120-day limit. *Id.* at 20-21 & n.8. Thus, this case provides the Court with an opportunity to address the precise question it left open in *Reed*—whether a prisoner who objects to delay can state a claim cognizable

under Section 2254. By deciding this question now, this Court can immediately resolve an issue which will otherwise create substantial but unnecessary confusion among the lower courts.

Second, the question presented by the petition turns largely on whether Congress seriously intended that cases not brought to trial within the time limits established by the IAD must, as Article V(c) of the Act appears to require, be dismissed with prejudice. In several cases, this Court has held that the purpose of the Act is "to encourage the *expeditious* and orderly disposition of [outstanding] charges," *Carchman* v. *Nash*, 473 U.S. 716, 720 (1985) (emphasis added) (internal quotations omitted); *United States* v. *Mauro*, 436 U.S. 340, 360 (1978) (internal quotations omitted), thus indicating strongly that *any* violation of the Act's speedy trial provisions should be considered extremely serious. The Court's decision in *Reed*, however, appears to cast doubt on the continuing vitality of that position. By addressing the question presented, the Court could resolve the tension among these decisions before it engenders any additional confusion among the lower courts.

For these reasons, and for the reasons set forth in the petition, the petition for a writ of certiorari should be granted.

Respectfully submitted,

ROBERT H. KING, SR.
KING, KING & KING
King Building
757 Chestnut Street
Gadsden, Alabama 35901
(205) 547-2431

REX E. LEE *
CARTER G. PHILLIPS
PAUL E. KALB
NATHAN C. SHEERS
SIDLEY & AUSTIN
1722 Eye Street, N.W.
Washington, D.C. 20006
(202) 736-8000

Counsel for Petitioner

June 27, 1994

* Counsel of Record